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October 22, 2004

VIA COURIER

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
The Portals
445 12th Street, SW
Washington, DC 20554

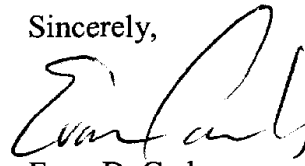
Re: School Board of Palm Beach County Florida
FRN: 0005-9548-39
Application for Modification of ITFS Station for KZB28
FCC File No. 19950524DL (Boynton Beach, FL)
Petition For Reconsideration

Dear Ms. Dortch:

On behalf of School Board of Palm Beach County Florida there are enclosed herewith an original and four copies of a Petition For Reconsideration regarding the above-referenced matter. This filing is being made pursuant to and in accordance with the requirements of 47 CFR §§ 1.106 and 1.4.

Please return a date stamped copy to the courier delivering this filing. Please direct all questions regarding this matter to the undersigned counsel.

Sincerely,



Evan D. Carb

Enclosures

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**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

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OCT 22 2004

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)

School Board of Palm Beach County Florida)

WT Docket No. 03-66

Dismissed Modification Application for KZB28)
To Relocate to Boynton Beach, Florida)

File No. 19950524DL

To: Chief, Wireless Telecommunications Bureau

PETITION FOR RECONSIDERATION

The School Board of Palm Beach County Florida ("School Board"), through counsel and pursuant to Sections 1.106 of the Commission's rules, hereby submits its petition for reconsideration ("Petition") regarding the Commission's dismissal of the School Board's collocation application for KZB28 to Boynton Beach, Florida (the "KZB28 Modification"). The Commission dismissed the KZB28 Modification by automated letter and Public Notice released September 22, 2004.¹ The automated letter recites that the KZB28 Modification was dismissed in accordance with directives issued to the Wireless Telecommunications Bureau ("WTB") in a July 29, 2004 Report and Order and Further Notice of Proposed Rulemaking.² As discussed

¹ See Public Notice Report No. 1941 Wireless Telecommunications Bureau Site-by-Site Action, released September 22, 2004 attached hereto as Exhibit 1. See also ULS Automated Letter 3033518 dated September 15, 2004, attached hereto as Exhibit 2.

² *Amendment of Parts 1, 21, 73, 74 and 101 of the Commission's Rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150-2162 and 2500-2690 MHz Bands*, Report and Order and Further Notice of Proposed Rulemaking, WT Docket No. 03-66, FCC 04-135 (rel. July 29, 2004) ("Broadband Services")
(Footnote continues on next page.)

herein, the Staff's dismissal of the KZB28 was improper because it was neither procedurally timely nor was it in accordance with the directives contained within the Broadband Services Order. Accordingly the School Board Respectfully requests that the Staff dismissal be overturned and that the KZB28 Modification be reinstated *nun pro tunc* for immediate processing and grant.

I BACKGROUND

The School Board first certified construction of KZB28 on July 26, 1975 at Belle Glade, Florida. On May 24, 1995 the School Board filed the KZB28 Modification, which sought to relocate the A-Group station to its studio site at 505 Congress Avenue in Boynton Beach, Florida. That Application was submitted in conjunction with similar applications by other ITFS and MDS licensees in the Palm Beach area as part of a marketwide settlement and a collocation project. Thereafter, by amendment submitted on September 14, 1995, the School Board proposed to reduce the Station's antenna height at the collocation site from 400 ft to 309 feet. The KZB28 Modification was accepted for filing by the Commission on September 30, 1996. As discussed above the KZB28 Modification was thereafter dismissed by the Staff, with the dismissal memorialized on a Public Notice on September 22, 2004. The dismissal was based on a directive contained in the Broadband Services Order to dismiss certain pending modification applications.

(Footnote continued from previous page.)

Order"). The Broadband Services Order and the Rules and Policies adopted thereby have not yet appeared in the Federal Register and are therefore not yet effective and still subject to reconsideration and appeal. While as discussed herein, the School Board believes the Staff's premature systematic and extensive application of directives contained within the Broadband Services Order to be improper and unlawful, in order to preserve its rights in this matter it is timely submitting its Reconsideration in accordance with 47 CFR §§ 1.4(b)(4) & 1.106.

II DISCUSSION

A. The Staff's Attempt to Apply The Directives of The Broadband Services Order Prior to the Effective date of Such Order Was Improper.

Section 1.103 of the Commission's Rules provides that, "the effective date of any Commission Action shall be the date of public notice of such action as that latter date is defined in § 1.4(b) of these rules."³ Section 1.4(b)(1) in turn states that the effective date of an Order in a Notice and Comment Rulemaking proceeding is the date on which notice is provided to the public through publication of the Order in the Federal Register.⁴ Because the *Broadband Services Order* will not be effective until publication in the Federal Register, the geographical licensing scheme, and related rules and policies on which the KZB28 Modification dismissal was based will not become effective until that date. Therefore, the Staff's attempt to apply such rules and policies to effectuate the dismissal in advance of the Order's effective date is inconsistent with existing Commission Rules and would give premature effect to rule and policy changes without adequate notice to the public. Such a conclusion would also be inconsistent with the Commission's obligation to act in accordance with existing rules and policies until such time as those rules are properly and finally changed.⁵

³ 47 CFR § 1.103(a)

⁴ 47 CFR § 1.4(b)(1).

⁵ See *Reuters Ltd. v. FCC*, 781 F. 2d 946, 947 & 950 (DC Cir. 1986); *Shering Corp. v. Shalala*, 995 F. 2d 1103, 1105 (DC Cir 1993); 5 USC 553 (B) & (C); *Chrysler Corp. v. Brown*, 441 US 281, 313 (1979); *Lindz v. Heckler*, 800 F. 2d 871, 878 (9th Cir. 1986); *JEM Broadcasting Co., Inc. v. FCC*, 22 F 2d 320, 327 (DC Cir 1994).

B. Notwithstanding the Premature Nature of the Staff's Attempted Action, the Staff Erred by Improperly Applying the Commission's Directive and Wrongfully Dismissed the KZB28 Modification.

In its decision to dismiss the KZB28 Modification, the Staff simply misapplied the FCC's directive to conclude that the School Board's application fell within the specific class of modifications that the WTB was ordered to dismiss. In dismissing the KZB28 Modification the Staff simply stated:

The Commission directed the Wireless Telecommunications Bureau to dismiss all pending applications to modify MDS or ITFS stations (including booster and hub stations), except for modification applications that could change an applicant's PSA, or applications for facilities that would have to be separately applied for under the rules adopted in the [Broadband services Order]. After reviewing your application, we have determined that your application falls within the class of applications that the Commission ordered dismissed.⁶

However, while the Staff correctly cited to Section 58 of the Broadband Services Order, they simply misapplied the directive with regard to the KZB28 Modification. That modification, which sought to relocate KZB28 would clearly change the station's Protected Service Area ("PSA") and therefore should not have been dismissed.

On September 15, 1995 the FCC modified its rules to adopt a fixed location PSA for ITFS and MDS stations.⁷ Section 21.902(d)(2) of its Rules, was changed to provide:

As of September 15, 1995, the location of these protected service area boundaries shall become fixed. The center of the circular area shall be the geographic latitude and longitude of the transmitting antenna site specified in station authorizations or previously

⁶ See Automated ULS Letter (Exhibit 2).

⁷ See *Filing Procedures in the Multipoint Distribution Service and in the Instructional television Fixed Service, Including electronic Filing and Competitive Bidding*, Report and Order in MM Docket 94-131, FCC 95-230, 10 FCC Rcd 9589 at ¶ 58, (June 30, 1995). See also 60 FR 36524, 36553 (July 17, 1995).

proposed applications filed at the Commission before September 15, 1995. Subsequent transmitter site changes will not change the location of the 56.3255 kilometers (35 mile) protected service area boundaries.

Because The KZB28 Modification was filed on May 24, 1995 and the minor amendment thereto on September 14, 1995, both filings occurred prior to September 15, 1995 , the date on which the PSA's became fixed, and therefore a grant of the KZB28 modification would in fact have altered the PSA afforded to KZB28 under the Commission's Rules. Accordingly, the Staff erred in failing to exclude the KZB28 Modification from the general dismissal of pending modification applications. The Staff's dismissal of the KZB28 Modification must therefore be overturned and the application reinstated for further processing and grant.

III CONCLUSION

WHEREFORE, for the foregoing reasons, The Commission's dismissal of the School Board's KZB28 Modification must be reversed and the application reinstated nunc pro tunc.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Evan Carb", written over a horizontal line.

Evan Carb
RJGLaw LLC
8401 Ramsey Avenue
Silver Spring, MD 20910
(301) 589-2999

Attorney for School Board of Palm Beach County

Dated: October 22, 2004

EXHIBIT 1



PUBLIC NOTICE

FEDERAL COMMUNICATIONS COMMISSION
445 12th Street, S.W., TW-A325
Washington, DC 20554

News Media Information (202) 418-0500
Fax-On-Demand (202) 418-2830
Internet: <http://www.fcc.gov>
<ftp.fcc.gov>

Report Number: 1941

Date of Report: 09/22/2004

Wireless Telecommunications Bureau Site-By-Site Action

Below is a listing of applications that have been acted upon by the Commission.

AF - Aeronautical and Fixed

File Number	Action Date	Call Sign	Applicant Name	Purpose	Action
0001763759	09/17/2004	WQBC289	Aeronautical Radio Inc	AM	G
0001873176	09/17/2004	KMK2	CESSNA AIRCRAFT COMPANY	CA	G
0001874481	09/18/2004	KHS4	AERONAUTICAL RADIO INC	CA	G
0001829206	09/14/2004	WDJ9	AERONAUTICAL RADIO INC	MD	G
0001829214	09/14/2004	KWX2	AERONAUTICAL RADIO INC	MD	G
0001874859	09/18/2004	WOM3	SEBRING FLIGHT CENTER	MD	D
0001804811	09/17/2004	WQBC288	Aeronautical Radio Inc	NE	G
0001827977	09/15/2004	WQBB575	Aeronautical Radio Inc	NE	G
0001827981	09/15/2004	WQBB576	Aeronautical Radio Inc	NE	G
0001828045	09/15/2004	WQBB577	Aeronautical Radio Inc	NE	G
0001828269	09/15/2004	WQBB578	Aeronautical Radio Inc	NE	G
0001828275	09/15/2004	WQBB579	Aeronautical Radio Inc	NE	G
0001828279	09/15/2004	WQBB580	Aeronautical Radio Inc	NE	G
0001828295	09/15/2004	WQBB581	Aeronautical Radio Inc	NE	G
0001868363	09/14/2004		LANCASTER COUNTY AIRPORT COMMISSION	NE	D
0001870512	09/15/2004	WQBB644	Delta Connection Academy	NE	G
0001870514	09/15/2004	WQBB643	Phazar Flight Support	NE	G
0001826179	09/15/2004	KJX8	VILLAGE OF NECEDAH	RO	G

VX - Instructional Television Fixed Service

File Number	Action Date	Call Sign	Applicant Name	Purpose	Action
20000818BIC	09/17/2004		CRAIG WIRELESS HONOLULU, INC.	AM	D
20000818BIM	09/17/2004		CRAIG WIRELESS HONOLULU, INC.	AM	D
20000818BIY	09/17/2004		CRAIG WIRELESS HONOLULU, INC.	AM	D
20000818BPX	09/15/2004	WNC738	COLLEGE OF SOUTHERN IDAHO	AM	D
20011001AAA	09/15/2004		PANTHER CREEK CONSOLI' SCHOOL DIST	AM	D
20011024AAB	09/16/2004		COMMUNITY UNIT SCHOOL DIST #3	AM	D
20011024AAC	09/16/2004		COMMUNIITY UNIT SCHOOL DISTRICT #337	AM	D
20011024AAD	09/15/2004		COMMUNITY UNIT SCHOOL DISTRICT #4	AM	D
20020401AAB	09/17/2004	WLX544	NECHES INDEPEND SCHOOL DISTRICT	AM	D
20020506AAA	09/16/2004	WND361	FAYETTEVILLE TECHNICAL COMMUNITY COLLEGE	AM	D
19930805DE	09/13/2004	WLX390	HOXIE SCHOOL DISTRICT #46	MD	G
→ 19950524DL	09/14/2004	KZB28	School Board of Palm Beach County	MD	D ←
19950524DN	09/14/2004	KHU90	SCHOOL BOARD OF PALM BEACH COUNTY	MD	D
19950915DW	09/16/2004	WLX671	HISPANIC INFO TELECOM NETWORK, INC.	MD	D
19950915GW	09/15/2004	KZE20	TRANS VIDEO COMMUNICATION INC	MD	D
19951020L6	09/16/2004	WHR661	CALIFORNIA STATE UNIVERSITY, SAN BERNARDINO	MD	D
19951020P7	09/15/2004	WHR825	BOARD OF TRUSTEES OF VINCENNES UNIVERSITY	MD	D
19951020R1	09/16/2004	WLX231	BOARD OF TRUSTEES OF THE VINCENNES UNIVERSITY	MD	D
19960805EK	09/16/2004	WHR526	HAMPTON ROADS EDUCATIONAL TELECOMMUNICATIO	MD	D
19960919AB	09/15/2004	WHR758	EMERSON COLLEGE	MD	D
19961223DL	09/17/2004	WNC681	HISPANIC INFO & TELECOM NETWORK, INC.	MD	D
19961223DM	09/16/2004	WNC447	HAGERMAN HIGH SCHOOL	MD	D
19961223GR	09/16/2004	WNC446	HAGERMAN MUNICIPAL SCHOOLS	MD	D
19970911AAA	09/17/2004	WLX988	NORTH AMERICAN CATHOLIC EDUCATIONAL PROGRAM	MD	D
20000818AXE	09/17/2004	WNC731	IDAHO STATE UNIVERSITY	MD	D
20000818BAE	09/16/2004	WNC261	Hawaii Pacific University	MD	D
20000818CNN	09/16/2004	WHR488	DENVER AREA ED'L TEL CONSORTIUM, INC	MD	D
20000908AAA	09/17/2004	WLX384	CATHOLIC DIOCESE OF HONOLULU	MD	D
20010420AET	09/17/2004	WHF247	IOWA LAKES COMMUNITY COLLEGE	MD	D
20020312AAA	09/17/2004	WLX549	FRANKSTON INDEPEND SCHOOL DIST	MD	D
20020312AAC	09/16/2004	WLX431	ALTO INDEPEND SCHOOL DISTRICT	MD	D
20020322AAQ	09/17/2004	WLX876	LAMAR R-1 SCHOOL DISTRICT	MD	D
20020322AAR	09/17/2004	WLX875	MONETT R-1 SCHOOL DISTRICT	MD	D
20020402AAI	09/16/2004	WND569	GRAPELAND INDEPENDENT SCHOOL DISTRICT	MD	D
20020517AAB	09/16/2004	WND459	UNIVERSITY OF NORTH CAROLINA	MD	D
20020614AAA	09/16/2004	WND396	CENTRAL CAROLINA COMMUNITY COLLEGE	MD	D
20020618AAA	09/17/2004	WND399	MOORE COUNTY SCHOOLS	MD	D
20020723AAG	09/16/2004	WND377	WHITE HALL SCHOOL DISTRICT	MD	D
20020726AAI	09/16/2004	WND376	ALTHEIMER UNIFIED SCHOOL DISTRICT	MD	D
20020809AAA	09/14/2004	WNC410	Northeast Technology Center	MD	D

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ULS Application - 19950524DL

Auto Letter - 3033518

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File Number 19950524DL Call Sign KZB28 Radio Service VX - Instructional Television Fixed Service

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Application Automated Letter

Applicant Name School Board of Palm Beach County Market Area
Date Letter 09/15/2004 Effective Date 09/14/2004 Letter Type Dismissal
Generated of Cancel/Dismiss

Applicant Mailing Information

Applicant SCHOOL BOARD OF PALM BEACH COUNTY

505 S. Congress Ave.
PO Box:
Boynton Beach, FL 33426

Contact Mailing Information or Assignee/Transferee Information

Contact

PO Box:

Dismissal Reasons

Dismissal On July 29, 2004, the Commission released a Report and Order and Further Notice of Proposed Rule Making which fundamentally restructured the band to provide MDS (renamed the Broadband Radio Service) and ITFS (renamed the Educational Broadband Service) licensees with greater flexibility, and took numerous steps to promote competition, innovation, and investment in wireless broadband services and educational services. See Amendment of Parts 1, 21, 73, 74 and 101 of the Commission's Rules to Facilitate the Revision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150-2162 and 2500-2690 MHz Bands, et al.; WT Docket Nos. 03-66, et al., Report and Order and Further Notice of Proposed Rulemaking, 19 FCC Rcd 14165 (2004) (MDS/ITFS R&O & FNPRM). The Commission directed the Wireless Telecommunications Bureau to dismiss all pending applications to modify MDS or ITFS stations (including booster and hub stations), except for modification applications that could change an applicant's PSA, or applications for facilities that would have to be separately applied for under the

rules adopted in the MDS/ITFS R&O & FNPRM. Id., 19 FCC Rcd at 14191 Para. 58. After reviewing your application, we have determined that your application falls within the class of applications that the Commission ordered dismissed. Accordingly, your application is dismissed without prejudice.

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CERTIFICATE OF SERVICE

I, Norman Liu, a paralegal with RJGLaw LLC, hereby certify that copies of the foregoing "Petition for Reconsideration" were served this 22nd day of October, 2004 on the following parties at the addresses and in the manner specified below:

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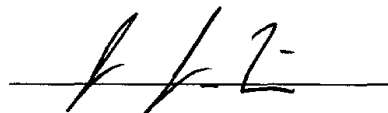
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A handwritten signature, likely "R. A. Saunders", is written in black ink over a horizontal line.